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6  
7 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
8 IN AND FOR THE COUNTY OF YAVAPAI

9  
10 STATE OF ARIZONA,

11 Plaintiff,

12 vs.

13 STEVEN CARROLL DEMOCKER,

14 Defendant.

Case No. P1300CR20081339

15  
16 APPLICATION TO QUASH  
17 CERTIFICATE OF JUDGE  
18 REQUESTING ATTENDANCE OF  
19 OUT OF STATE WITNESS

Honorable Thomas Lindberg Division 6

20 Comes now the victim, KATHERINE GRAY DeMOCKER, by and through  
21 undersigned counsel and requests this Court enter Its order quashing the Certificate of Judge  
22 Requesting Attendance of Out-of-State Witness (Katherine DeMocker) signed March 24, 2010  
23 and filed March 26, 2010.

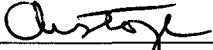
24 The victim further requests this Court set the matter for evidentiary hearing to determine  
25 whether the party requesting the certificate has met Its burden to show Ms. DeMocker's  
testimony is material and necessary and that it would not be an undue burden upon her to appear.

1 The bases for this Application are more fully set forth in the Accompanying  
2 Memorandum of Points and Authorities which is hereby incorporated by reference.

3 Further, the victim requests this Court consider this application on an emergency basis as  
4 there is a hearing set in Los Angeles April 2, 2010; and that after oral argument on this  
5 Application, the Court order the Yavapai County Attorney to withdraw its petition now pending  
6 in Los Angeles and request the hearing be vacated until further order of this Court.

7  
8 Respectfully submitted this 1<sup>st</sup> day of April 2010

9 TRAUTMAN DUPONT PLC

10 By   
11 Christopher B. Dupont  
Attorney for Victim

12 Original Mailed this 1<sup>st</sup> day  
13 Of April 2010:

14 Clerk of Court, Yavapai County

15 Copies e-mailed this  
10<sup>th</sup> day Of November 2009, to:

16 Judge Thomas B. Lindberg  
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## MEMORANDUM OF POINTS AND AUTHORITIES

### STATEMENT OF FACT

On July 2, 2008 Katherine's mother Carol was beaten to death in her own home. As her surviving daughter, Katherine has constitutional rights in the state of Arizona – the most important being the right to be treated with “fairness, respect and dignity.”

Throughout these proceedings, the Yavapai County Attorney has violated Katherine's rights as a victim. From the outset of the case, the prosecution has discouraged both Katherine and her sister Charlotte from asserting their rights as victims. On the day of their father Steven DeMocker's initial appearance October 24, 2008, Deputy County Attorney Bill Hughes informed the Court that Charlotte and Katie would have to waive their rights as victims if they wanted to have contact with their father.

As the Court is aware from previous Motions filed in this case, Katherine and Charlotte DeMocker were forced to file motions with this court to request help both setting up a meeting with the prosecutors to express their views about the case and for return of their personal property seized by the state - even though the property had nothing to do with the prosecution of this matter.

Both girls have been very clear with the prosecution they believe their father is innocent. Both girls have repeatedly asked the prosecution continue their investigation by identifying the source of DNA under their mother's fingernails and the source of DNA on a light bulb that had been unscrewed at their mother's house at the time she was murdered. In short, the victims want the state to find the person who killed their mother. They want the prosecutors to dismiss the death penalty against their dad so he not be executed before the state finds their mother's killer.

1 The prosecution has ignored their requests and attempted to marginalize their input.

2 The most recent indignity: the prosecution went to the Court and asked for a  
3 Certificate Requesting Katherine's attendance at trial. The prosecution did not provide notice to  
4 Katherine's attorney about the request; the prosecution did not do any investigation whatsoever  
5 to determine whether such request would cause undue hardship on Katherine; and to our  
6 knowledge the prosecution did not allege any fact to support a finding that Katherine's testimony  
7 would be necessary or material to the issues at trial.

8 And then the state sent a process server to Katherine's school, a small liberal arts  
9 college, and had her pulled out of class to give her the paperwork.

10 The matter is set for hearing in Los Angeles April 2, 2010. Given such short notice,  
11 Katherine will struggle to secure legal representation at that hearing.

12 STATEMENT OF LAW / ARGUMENT

13 The procedure for securing the attendance of a witness located out of state is set  
14 forth in A.R.S. §§13-4091 – 4095. As an initial matter the requesting party must apply to the  
15 Court where the matter is pending to make a showing the witnesses testimony would be material  
16 and necessary and that attendance would not cause an undue hardship on the witness. A.R.S.  
17 §13-4093. The burden of showing materiality and necessity is on the requesting party. *State v.*  
18 *Mance*, 7 Ariz.App. 269, 438 P.2d 338 (Div. 1 1968).

19 The witness is entitled to a preliminary hearing on whether her testimony is material  
20 and necessary. *State v. Mance*, 7 Ariz.App. at 271, 269 P.2d at 340; citing *State v. Smith*, 87  
21 N.J.Supre. 98, 208 A.2d 171, 174 (1965).

22 In this case there was no hearing to determine whether it would be appropriate to  
23 issue a Certificate to Request Attendance. To our knowledge there was no showing of necessity  
24  
25

1 or materiality in the prosecutor's application. The reason there was no hearing is that the  
2 prosecutor did not provide notice they were attempting to obtain an order. It is unethical for an  
3 attorney to seek orders against a party without giving notice to that party and unethical for a  
4 party to allege facts (such as attendance in Arizona would not cause undue hardship) without  
5 investigating whether those facts are true. It is unconstitutional to continue to violate  
6 Katherine's rights as a victim and an affront to common human dignity to try to embarrass  
7 Katherine by pulling her from her class to serve her with papers related to the murder of her  
8 mother.

9 CONCLUSION / REQUEST

10 The state has obtained a certificate to request the attendance of Katherine  
11 DeMocker at trial on May 12-13, 2010. They did so without alleging any facts that would  
12 support their contention her testimony would be material or necessary; they did so without  
13 investigating whether attendance on those dates would cause undue hardship; and they did so  
14 without giving Katherine or her attorney notice and opportunity to be heard.  
15

16 Therefore, Katherine DeMocker requests this Court Quash its Certificate  
17 Requesting Attendance of Out-of-State Witness. Further, Ms. DeMocker requests this Court  
18 order the state to vacate the hearing currently set in Los Angeles, California April 2, 2010.  
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